

Application No. 10/047,911  
Amendment Dated September 8, 2003  
In Reply to USPTO Office Action dated March 6, 2003  
Confirmation No. 2721  
Attorney Docket No. 3973-011491

**REMARKS**

The drawings are objected to under 37 C.F.R. § 1.165(a). Applicant submits five (5) sets of new photographic drawings to overcome the rejection. Withdrawal of the objection is respectfully requested in light of this submission.

The disclosure is objected to and the claim stands rejected pursuant to 37 C.F.R. § 1.163(a) and under 35 U.S.C. § 112, first and second paragraphs. Applicant believes that the amendments made to the specification specifically address the Examiner's objections detailed in Paragraphs A-G, J, M-R and V-W on pages 5 through 11 of the Office Action. Some information requested in paragraphs H, I, K, L S, T and U is not available at this time. Withdrawal of the objection and reconsideration of the rejection under 35 U.S.C. § 112, first and second paragraphs, is respectfully requested.

Claim 1 stands rejected under 35 U.S.C. § 102(b) for asserted anticipation by European Union Plant Breeder's Rights Application No. 20001110 in view of the following references:

1. 'Clemenpons' and 'Loretina', Two Early Clementine Mandarin Mutations of Potential Interest, 174-176, 1996, Bono et al.; and
2. Resultados Sobre La Desverdizacion En Nuevas Variedades: Clemenpons Y Loretina, 117-124, Jun-Jul 1997, Perez.

These references are non-enabling publications and do not indicate public use or sale of 'Clemenpons' in the United States more than one year before the filing of the instant application. According to the Applicant, 'Clemenpons' underwent a long period of investigation before its first public availability in Spain. The statement in the Bono et al.

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article that “‘Clemenpons’ was available in May of 1996” only means that the new variety was in investigation for virus free material, and the Perez article indicates that the virus free investigation was successful. Neither disclosure is enabling and does not teach use of the new variety in the United States more than one year before the filing date of the instant application. European Union Plant Breeder’s Rights Application No. 20001110 is non-enabling and does not indicate public use or sale of ‘Clemenpons’ in the United States more than one year before the filing of the instant application, so a rejection under 35 U.S.C. § 102(b) is inappropriate.

‘Clemenpons’ was first commercialized in Spain in 2000. It first became publicly available after August 26, 2000, only in Spain. This was only public availability of ‘Clemenpons’ anywhere in the world before the filing of the instant application. Therefore, because the new variety was never disclosed in an enabling publication, nor was it in public use or for sale in this country, the rejection under 35 U.S.C. § 102(b) is wholly inappropriate. Withdrawal of the rejection under 35 U.S.C. § 102(b) is respectfully requested.

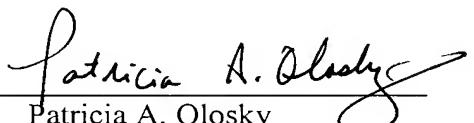
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**CONCLUSION**

In light of the foregoing, allowance of the claim is respectfully requested.

Respectfully submitted,

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## CLEMENTINE TREE NAMED 'CLEMENPONS'

### BOTANICAL CLASSIFICATION

*Citrus reticulata*

### VARIETAL DENOMINATION

'Clemenpons'

### **BACKGROUND OF THE NEW PLANT**

The present invention comprises a new and distinct cultivar of clementine tree botanically known as *Citrus reticulata*, and herein referred to by its cultivar name 'Clemenpons'.

The new cultivar was discovered in 1964 as a seedling in Pego, Aligante, Spain as a spontaneous mutation of 'de Nules' clementine (unpatented). 'Clemenpons' differs from 'de Nules' in that it has an earlier fruit maturity and characteristic burr knots and galls on its trunk.

The new cultivar was first asexually reproduced in 1985 in Pego (Valencia), Spain by grafting budwood onto citrange rootstock (unpatented). Subsequent grafting of budwood onto citrange rootstock in Moncado (Valencia), Spain has shown the features of the new cultivar to be stable and reproduce true to type in successive propagations.

The following traits are determined to be basic characteristics of the new cultivar which in combination distinguish this clementine tree as new and distinct.

1.     Earlier fruit maturity than 'Clemenules' (unpatented).
2.     Fruit characteristics similar to 'Clemenules'; superior fruit quality to 'Arrufatina' Clementine (unpatented).
3.     Tree characteristics similar to 'Clemenules'; less vigorous growth than 'Fina' (Commune) Clementine (unpatented).
4.     Fruit internal maturity and rind colors up to 3 weeks earlier than 'Clemenules'.
5.     Larger fruit than 'Fina' (Commune) Clementine.

## **DESCRIPTION OF THE DRAWINGS**

The accompanying photographic drawings illustrate the new cultivar with the color being as true as possible with color illustrations of this type. The photographs were taken under natural light conditions.

Fig. 1 shows the tree shows fruit of the new variety;

Fig. 2 shows fruit of the new variety shows the flesh of the new variety; and

Fig. 3 shows color indices during opening ripening of the fruit; [.]

Fig. 4 shows the fruit of the new variety, "1000.a/L.b (Parametros de Hunter)" is an index of color; and

Fig. 5 shows the tree.

## **DESCRIPTION OF THE PLANT**

The following description sets forth the characteristics of the new cultivar. The data which defines these characteristics were collected from asexual reproductions by grafting of budwood onto Troyer citrange rootstock. The plant history was taken on a 5 year old tree outside in Moncada (Valencia), Spain. In the following description, color references are made to the R.H.S. Colour Chart of The Royal Horticultural Society of London.

Classification:

Botanical: *Citrus reticulata*.

Commercial: Clementine tree.

Tree:

Growth rate: Medium vigor; similar to Clemenules.

Average amount of time to produce a fruit bearing tree:

From nursery to planting: 2 years.

From planting to cropping: 3-4 years.

Average amount of growth per season: 2 to 4 cycles of 6-12 inches.

Overall shape: Spreading.

Height: Up to 12 feet, if allowed.

Spread: Depending on spacing, up to 12 feet.

Preferred soil type: Varies with rootstock type; loamy.

Bark Color:

Young: Yellow-Green Group 146A.

Odd: Grey-Brown Group 199C.

Foliage:

Shape:

Overall: Lanceolate.  
Base: Obtuse.  
Tip: Acute.

Size:

Length: 61 mm.  
Width: 20 mm.

Color:

Upper surface: Green Group 132A.  
Lower surface: Green Group 132B.  
Venation: Yellow-Green Group 144B.

Marginal form: Entire.

Petiole size:

Diameter: 1.2 mm.  
Length: 6 mm.  
Color: Yellow-Green Group 146A/B.

Scent: Pleasant.

Surface texture: Medium roughness.

Flowers:

Blooming period: April in Moncada (Valencia), Spain.  
Number of petals: 5.  
Number of sepals: 5.

Sepal color:

Upper surface: Yellow-Green Group 146B.  
Lower surface: Yellow-Green Group 146B.

Petal size:

Length: 12 mm.  
Width: 5 mm.  
Pedicel length: 4 mm.

Pedicel color: Yellow-Green Group 146A/B.

Overall size:

Bud:

Length: About 3 mm.

Diameter: About 2.5 mm.

Opened flower:

Length: About 5 mm.

Diameter: About 2.5 mm.

Bud color: Yellow-Green Group 146A/B.

Petal color: White Group 155B.

Upper Surface: White Group 155A.

Lower Surface: White Group 155A.

Fruit:

Maturity date: Mid-October in Moncada (Valencia), Spain.

Weight: 70 to 120 g.

Shape:

Overall: Usually flat, depending on climate In dry climates,  
spherical; In coastal climates, oblate.

Base: Slightly indented.

Apex: Neck/nipple develops only in cold inland areas.

Diameter: 55-65 mm.

Height: 40-50 mm.

Furrows: None.

Rind:

Surface texture: Smooth; slightly pebbly.

Color: Between Red-Orange Groups 28A and 28B.

Thickness: 2 mm.

Adherence to flesh: Adheres tightly until mature.

Ease of peeling: Very easy when mature.

Oil glands: Even; not protruding.

Scent: Mandarin-like.

Flesh:

Axis: Straight.

Puffing: Occurs when overly mature; "puffing" is a term of art that refers to a condition where fruit segments become loosened from the interior skin surface and the fruit in its entirety becomes soft in feel and appearance.

Number of segments: 9-10.

Separability of segments: Easily.

Pulp:

Color:	Orange Group 28C.
Texture:	Tender.

Vesicles:

Shape:	Tapered.
Size:	2-4 mm <u>in length</u> .

Juice:

Relative amount in fruit: 46-50%.

Color:	Orange Group 28C.
Aroma:	Tangerine.
Flavor:	Tangerine-like.

Total soluble solids: 10-13° Brix.

Acid: 0.8-1.1%.

### REPRODUCTIVE ORGANS

Color:

Filament:	Greyed-Orange Group 168D.
Pollen:	Greyed-Orange Group 167A.
Style:	Greyed-Orange Group 168D.
Ovaries:	Greyed-Yellow Group 161B.

Seeds: Seedless under non-pollinating conditions. When present, there is an average number of 0-3 seeds per fruit colored Yellow-Green Group 145D.

## **FRUIT**

Persistence of fruit on tree: Hangs well.

Color:

Aleido:Greyed-Orange Group 170A.

Flesh: Greyed-Orange Group 170C.

Use: Fresh eating.

Keeping quality: 40-60 days after picking at 1-8°C.

Shipping quality: Good, if adhere to protocols.

Average amount of fruit produced per season per tree: 35 to 50 t/ha (crop yield)  
for a 60-90 Kg tree.

Persistence to diseases/pests: No unusual susceptibility to diseases or pests has been noted to date.